

REMARKS

This Application has been carefully reviewed in light of the Final Action issued December 12, 2007. Claims 1-30 are pending in this Application. Applicant respectfully requests reconsideration and favorable action in this Application.

Claims 1-6, 10-18, 20, and 26-30 stand rejected under 35 U.S.C. §102(b) as being anticipated by Gilbert. Independent Claims 1, 11, 16, and 26 recite in general an ability to determine pauses in encoded information of a packet flow, fragment a packet in the packet flow into two or more fragmented packets, and adjust fragmentation of packets in the packet flow in response to the encoded information including a pause. By contrast, the Gilbert patent merely discloses removing silence samples from or replicating silence samples to an audio data packet. The Gilbert patent clearly states that it modifies the received audio data packet by adding or removing silent samples therefrom for subsequent playback. There is no capability provided in the Gilbert patent to create two or more packets from its audio data packet. The Gilbert patent merely adds information to or removes information from, in the form of silence samples, the received audio packet. Though the Gilbert patent discloses modifying the packet with the addition or removal of silence samples therefrom, there is no fragmentation of the packet into two or more packets. No additional packets are created during this process by the Gilbert patent from the received audio packet. A single audio data packet is received in the Gilbert patent and, though possibly modified, a single audio data packet is then provided therefrom. Thus, the Gilbert patent does not disclose any capability to fragment a packet into two or more fragmented packets let alone an ability to adjust the fragmentation of packets as required by the claimed invention.

Therefore, Applicant respectfully submits that Claims 1-6, 10-18, 20, and 26-30 are not anticipated by the Gilbert patent.

Claims 9 and 21-25 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Gilbert in view of Limb, et al. Independent Claim 1, from which Claim 9 depends, has been shown above to be patentably distinct from the Gilbert patent. Independent Claim 21 includes similar features found in Independent Claims 1, 11, 16, and 26 shown above to be patentably distinct from the Gilbert patent. Moreover, the Limb, et al. patent does not include any additional disclosure combinable with the Gilbert patent that would be material to patentability of these claims. Therefore, Applicant respectfully submits that Claims 9 and 21-25 are patentably distinct from the proposed Gilbert - Limb, et al. combination.

Applicant notes with appreciation the allowance of Claims 7, 8, and 19.

This Response to Examiner's Final Action is necessary to address the Examiner's faulty interpretation of the cited art in support of the rejections to the claims. This Response to Examiner's Final Action could not have been presented earlier as the Examiner has only now introduced the faulty interpretation of the cited art in rejecting the claims.

CONCLUSION

Applicant has made an earnest attempt to place this case in condition for allowance. For the foregoing reasons, and for other reasons clearly apparent, Applicant respectfully requests full allowance of all pending claims.

If the Examiner feels that a telephonic conference is needed to clear up matters addressed herein, the undersigned attorney stands ready to discuss this Application at the convenience of the Examiner.

The Commissioner is hereby authorized to charge any other fees or credit any overpayments associated with this Application to Deposit Account No. 02-0384 of BAKER BOTTS L.L.P.

Respectfully submitted,

BAKER BOTTS L.L.P.

Attorneys for Applicants



Charles S. Fish

Reg. No. 35,870

February 12, 2008

CORRESPONDENCE ADDRESS:

2001 Ross Avenue, Suite 600
Dallas, TX 75201-2980
(214) 953-6507
Customer Number: 05073